

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

217

CWP-2545-2020

Date of decision: 07.09.2022

CENTRAL BANK OF INDIA

.... Petitioner

Versus

STATE OF PUNJAB AND OTHERS

.... Respondents

**CORAM: HON'BLE MR. JUSTICE M.S. RAMACHANDRA RAO
HON'BLE MR. JUSTICE HARKESH MANUJA**

Present : Mr. C.S.Pasricha, Advocate for the petitioner.
Ms. Shivani Sharma, DAG, Punjab for respondents No.1 to 3.

M.S. RAMACHANDRA RAO, J. (oral)

This Writ Petition is filed by the petitioner challenging order dt.02.08.2019 passed by the Additional District Magistrate, Khanna who dismissed an application filed under Section 14 of the SARFAESI Act, 2002 (for short-the Act) on the ground that the property whose physical possession was sought by the petitioner-Bank was cultivable land as per *khasra girdawri*, and such the land is exempted as per the Section 31(i) of the Act.

Counsel for the petitioner contends that the Tehsildar, Khanna had given a certificate on 15.10.2011 on the request of respondent No.4-borrower made on 07.10.2011, that the subject land is *gair mumkin* and a Dhaga factory is running there, and on the basis of the said certificate issued by the Tehsildar Khanna, money was lent by the petitioner to respondent No.4, and grave irreparable loss would be caused to the petitioner if the petitioner is not allowed to take possession of the subject property under Section 14 of the Act.

In the reply filed by the State in the Registry, it is contended that this certificate was not produced before respondent No.3 by the Bank; that on the basis of the entry in the *jamabandi*, the order was passed. It is further contended that there is no entry regarding change of land use.

Since respondent No.3 had no opportunity to consider the certificate dt.15.10.2011 issued by the Tehsildar, Khanna, which indicates that the land is not agricultural land, and since the said certificate was issued on the basis of report of the Patwari, we are of the opinion that the impugned order needs to be set aside and the matter be remitted back to respondent No.3 to consider the effect of the certificate dt.15.10.2011 issued by the Tehsildar, Khanna.

Accordingly, the impugned order dt.02.08.2019 passed by respondent No.3 exercising the delegated functions of respondent No.2 is set aside; matter is remitted back to respondent No.3 to consider the application filed by the petitioner under Section 14 of the Act afresh by giving a personal hearing to the representatives of the petitioner; petitioner is given liberty to file the certificate dt.15.10.2011 issued to the petitioner by the Tehsildar, Khanna showing the subject land to be non-agricultural land before respondent No.3; after considering the said certificate, respondent No.3 shall pass an order in accordance with law within four weeks from the date of hearing conducted by respondent No.3 and communicate its decision to the petitioner.

In view of the above, this Writ Petition is allowed.

No costs.

(M.S. RAMACHANDRA RAO)
JUDGE

(HARKESH MANUJA)
JUDGE

September 07, 2022

Jyoti-IV

Whether speaking/reasoned:	Yes/No.
Whether reportable :	Yes/No